

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

CAROLYN HOLLIDAY,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

*
*
*
*
*
*
*
*
*

No. 07-459V

Special Master Christian J. Moran

Filed: April 7, 2008

Attorneys' Fees and Costs, No
Objection from Respondent, Expert
Used In More Than One Case

*Ronald C. Homer, Esq., Conway, Homer & Chin-Caplan, P.C., Boston, MA., for petitioner;
Rebecca J. Trinrud, Esq., United States Dep't of Justice, Washington, D.C., for respondent.*

ATTORNEYS' FEES AND COSTS DECISION*

Petitioner, Carolyn Holliday, seeks reimbursement for her attorneys' fees and costs. The Court awards the amount to which respondent has not objected.

Ms. Holliday alleged that a flu vaccination caused her to develop Guillain-Barre syndrome. Represented by counsel, Ms. Holliday sought compensation for this condition. In conjunction with the filing of her petition, Ms. Holliday submitted, as exhibit 14, the report of Dr. Derek Smith. Ten articles were attached to Dr. Smith's report. Dr. Smith opined that the flu vaccine can cause Guillain-Barre syndrome when the onset of the condition is less than four

* The undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document's disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

weeks after the vaccination. Ms. Holliday's case fit this temporal pattern.

When Ms. Holliday's counsel filed her petition, counsel also filed 17 other petitions in which petitioners alleged that the flu vaccine caused various injuries, including Guillain-Barre syndrome or other neurological problems. Ms. Holliday's attorney also filed Dr. Smith's report in some, but not all, of the other cases that were filed simultaneously with Ms. Holliday's case.

Although respondent denied that the flu vaccine caused Ms. Holliday's Guillain-Barre syndrome, the parties negotiated a resolution of this case. The parties submitted a stipulation that formed the basis of a decision, filed on March 21, 2008.

On March 24, 2008, Ms. Holliday filed an application for an award of her attorneys' fees and costs. Ms. Holliday's original request totaled \$111,865.78. This request was divided into five separate components. First, Ms. Holliday sought compensation for her attorneys' fees for her case specifically (\$16,913.85). Second, Ms. Holliday sought compensation for her attorneys' costs in her case specifically (\$212.89). Third, Ms. Holliday requested compensation for attorneys' fees for work on the flu cases generally (\$80,438.90). Fourth, Ms. Holliday sought compensation for costs on the flu cases generally (\$13,193.85). Fifth, Ms. Holliday requested compensation for the costs that she incurred specifically (\$1,106.29).

Apparently, respondent did not agree to the entire request. The parties negotiated a reduced amount to which respondent did not object.

On March 28, 2008, Ms. Holliday filed an amended application, divided into three components. This application did not distinguish between, on the one hand, fees and costs incurred in Ms. Holliday's case specifically, and, on the other hand, fees and costs incurred in the flu cases generally. The amount requested in attorneys fees is \$88,770.75. The amount requested in costs is \$13,406.74. The amount requested for costs that she bore personally remains the same – \$1,106.29. The total requested is \$103,283.78.

After reviewing the request, the court finds the amount requested to be reasonable. For purposes of establishing a record, it is noted that because this decision awards the attorneys' fees and costs for activities on the general proposition that the flu vaccine can cause Guillain-Barre syndrome, seeking compensation for the work in obtaining Dr. Smith's report in other cases in which a petitioner relies on Dr. Smith's report on general causation would presumably not be appropriate. However, in other cases, counsel may seek an award of attorneys' fees for work performed specifically for those other petitioners and costs incurred specifically on those other cases.

The court awards **\$103,283.78** in attorney's fees and other litigation costs. This amount shall be divided into two components: \$102,177.49 shall be made payable to Ms. Holliday and her law firm, Conway, Homer & Chin-Caplan, P.C. The remaining \$1,106.29 shall be made payable to Ms. Holliday. The court thanks the parties for their cooperative efforts in resolving this matter. The Clerk shall enter judgment accordingly.¹

IT IS SO ORDERED.

s/ Christian J. Moran

Christian J. Moran
Special Master

¹ Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.